

Remarks

Claims 1-65 are believed to be pending in the application. Applicant respectfully submits that claims 10-11, 19, 38-39 and 49 have been withdrawn from consideration but remain pending in the application. Correction by the Examiner is respectfully requested.

Applicant has cancelled claims 30-31 and 60-61. New claims 66-71 have been added. Thus, upon entry of this amendment, claims 1-29, 32-59, and 62-71 will be pending and claims 1-9, 12-18, 20-29, 32-37, 40-48, 50-59, and 62-71 will be under consideration.

Claims 1-9, 12-18, 20-37, 40-48 and 50-65 have been rejected under 35 USC 103(a) as obvious over Hegedus in view of Seo. According to the Examiner, one of ordinary skill in the art would look to the teachings of Seo in creating a solid or liquid formulation, as disclosed generally by Hegedus. Applicant respectfully disagrees.

Neither Seo nor Hegedus teaches or suggests using an apoptosis-inducing chemotherapeutic in a solution in which microspheres are suspended, as recited, for example, in claims 1 and 33. Seo discloses that “drugs can be dissolved directly into a gel solution in addition to the microspheres. This allows the administrator to deliver two drugs with independent release patterns.” See, e.g., col. 7, l. 60 - col. 8, l. 16. Seo does not teach or suggest that an apoptosis-inducing chemotherapeutic be used in the suspending solution. Indeed, Seo does not recognize that having an apoptosis-inducing chemotherapeutic in the suspending solution increases the penetration of the microspheres incorporating at least one anti-tumor chemotherapeutic. Thus, there is no motivation to select an apoptosis-inducing chemotherapeutic as the “drug” that Seo suggests can be put into a gel solution. Accordingly, independent claims 1 and 33, as currently amended, are not *prima facie* obvious. Likewise, the remaining claims pending in the application, all of which depend from either claim 1 or claim 33, are also nonobvious. In addition, Applicant respectfully requests that the withdrawn claims be reinstated and allowed because they depend from allowable independent claims.

In addition, Seo fails to recognize that one advantage of the claimed microspheres recited in claim 4, for example, is that the spreading capability of the microspheres is enhanced when the longest diameter of the microspheres is less than about 20 microns. Rather, Seo suggests that any microspheres smaller than 250 microns, preferably smaller than 75 microns, are suitable, with no preference to smaller microspheres. See, e.g., col. 5, ll. 33-42. Thus, it would not have

been obvious to one of ordinary skill in the art, based on Seo and any other teachings in the art, to have selected microspheres wherein the diameter is less than about 20 microns. The superior properties of such microspheres were unexpected. Accordingly, claim 4, as currently amended, is not *prima facie* obvious for this additional reason.

CONCLUSION

In view of the foregoing amendments and remarks, Applicant respectfully requests allowance of the pending claims. The Examiner is invited to contact the undersigned attorney to discuss any matter concerning this application. The Commissioner is hereby authorized to charge any fees which may be necessary for consideration of this paper to Kenyon & Kenyon Deposit Account No. 11-0600.

Respectfully submitted,

3/10/03



W. David Wallace

Reg. No. 42,210

KENYON & KENYON
1500 K Street, N.W., Suite 700
Washington, D.C. 20005
Telephone: 202-220-4200
Facsimile: 202-220-4201

DC01 443513